IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

HAMIR SINGH VERSUS. STATE OF RAJASTHAN

S.B. Criminal Appeal No.230/1988 under Section 374 Cr.P.C. read with Section 11 of the Probation of Offenders Act against the Judgment dated 7.5.1988 in Sessions Case No.80/86 passed by Sh. Mangal Chand Tailor, RHJS, Additional Sessions Judge Bali.

DATE OF JUDGMENT : February 15 , 2007.

P R E S E N T

HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr. V.D.Dadhich for Mr.N.M.Lodha,for the appellant.
Mr.Narendra Moolchandani, P.P.

BY THE COURT:

1. This appeal is directed against the judgment and order dated 7.5.88 passed by the Additional Sessions Judge Bali , whereby he convicted and sentenced accused appellant Hamir Singh, after trial in Sessions Case No.80/86 under Section 352 IPC and gave benefit of Probation on furnishing bail bond of Rs.2500/- and with like amount of sureties for a period of 3 years to keep peace and good behaviour. He further directed that accused

appellant shall pay Rs.2500/- as compensation to Mst.Pepi and he be remain present as and when called upon to do so.

2. The prosecution story is woven like this:-

On 2.5.86 one F.I.R. No.50/2.5.86 was lodged at police station Bali district Pali wherein it is stated that prior to seven years Mst.Pepi was working at the house of Hamir Singh accused appellant as bonded labourer and thereafter she stopped working so accused appellant become annoyed and he gave beating to Mst.Pepi prior to two years of the incident. Thereafter he threatened Mst.Pepi that if she come out from his residence “Rawla' he will kill her. On the date of incident Mst.Pepli along with her daughter Rambha went to take water from hand pump and at the time of return she was ahead and Rambha was following behind her and whey they reached near “Rawla' of Hamir Singh and crossed 5-6 paces then accused appellant Hamir Singh opened fire on her and due to fire her “Matka” fell down and broken in to several run pieces on ground and she frightened, run away and entered in to house of Nenu khan and hide herself. After the incident, she called upon her son Naviya from Falna and when he came then F.I.R. was lodged. Upon this report, police registered FIR for offence under Section 307 IPC. During Investigation accused appellant was arrested and at the instance of accused,police recovered gun Article 1 which is licensed gun and on examination it was found that

gun is working condition. After usual investigation, police filed challan against the accused appellant before the Additional Chief Judicial Magistrate, Bali, who committed the case to the Sessions Court for trial as the case is exclusively triable by the Sessions Judge. Other usual memos were prepared and challan against accused appellant was filed under section 307 IPC. Charge was read over and accused pleaded not guilty and claimed for trial.

Prosecution has produced 15 witnesses viz. P.W. 1 Havli, P.W. Nenu Khan, PW3 Nema Ram, PW 4 Pakiya PW5 Gamna Ram,PW6 Lumba Ram, PW7 Anop Singh PWE8 Mangi Lal PW 9 Nava Ram PW1o Pepi P.W.11 Bhera Ram,PW12 Hari Ram, PW13 Rambha P.W.14 Mohabat Singh, P.W.15 Sankali and statement of these witnesses recorded. Prosecution also exhibited 12 documents. Thereafter statement under Section 313 Cr.P.C. was recorded in which accused appellant said that due to removal from service, she became inimical and she gave birth before her marriage and her character was not sound. Due to her character therewas quarrel between Pepi and her husband. In support of his defence,D.W.1 Daili, D.W.2 Pema D.W.3 Jabar Singh and D.W.4 Chandaram were produced.

3. Heard the learned counsel for the appellant and the learned Public Prosecutor and perused the record of the case .

4. Per contra, learned Public Prosecutor supported the impugned finding and urged that the appellant was rightly convicted and sentenced. So the appeal must be dismissed.

5. Having analysed the evidence of prosecution, it is quite clear that out of 15 witnesses P.W.1 Havali, P.W.2 Nenu Khan, P.W.3 Nema Ram ,P.W.4 Pakiya and P.W.6 Lumba Ram and P.W.15 Sankali have not supported the prosecution case and have been declared hostile, and, material witnesses are P.W.10 Pepi , her son P.W.9 Nava Ram and daughter P.W.13 Rambha are corroborated by Bhera P.W.11. I find the version of prosecutrix Pepi as trustworthy and the defence witnesses cannot be relied on as it was a case of accident and thus, evidence considered being reliable and cannot be doubted and trial court rightly convicted and sentenced the accused appellant as aforesaid and looking to the utmost leneancy for the sentence, theappeal does not require interference and liable to be dismissed.

6. In the result, this appeal is dismissed.and the judgment dated 7.5.1988 passed in Sessions Case No.80/86 by the Additional Sessions Judge, Bali is affirmed and maintained.

[CHATRA RAM JAT],J.

CKThanvi